

Before the
Federal Communications Commission
Washington, D.C. 20554

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APR 10 2003

FCC-MAILROOM

In the Matter of)	
)	
Amendment of Section 73.202(h),)	MB Docket No. 02-136
Table of Allotments)	RM- IO663
FM Broadcast Stations)	RM- IO667
Arlington, The Dalles, Moro,)	
and Fossil, Oregon and Forks,)	
Hoquiam, Aberdeen, Kent and)	
Shoreline, Washington)	

To: Chief, Allocations Branch

Reply Comments

Robert Cassard
4735 N.E. 4th Street
Renton, WA. 98059

April 10, 2003

014

Commenter hereby submits his reply comments on this docket and requests acceptance of these late-filed reply comments. **As** a member of the general public, this commenter was not aware of the shortened 15 day reply period until late March, 2003. These reply comments do not address any submissions in response to the March 10 Public Notice thus no party will be prejudiced by the acceptance of these reply comments.

I. Introduction

Once again Petitioners and Coiltiter-petitioners seek an allotment plan that runs contrary to the most basic of Commission rules and regulations and that which the Commission is fundamentally opposed to. Each party proposes to move their respective rural-located stations to deep inside the wealthier Seattle-Tacoma Urbanized Area. The Commission should see this as no less than an absolute blatant and brazen attempt to manipulate its Section 307(b) policies.

In this process, the end result will be to deprive the Community of Mercer Island of its Priority 1 *first aural service*, KMIH-FM (104.5 mhz, channel 283), which was initially licensed by the Commission in 1970, and is mutually exclusive to the proposed allotment plans in this rulemaking proceeding.

The issue is very clear. Does the Commission wish to eradicate a longstanding FM service in a physically-isolated land mass (ie. Mercer Island, population 22,036, Census 2000), in the middle of a serious documented earthquake zone (see reply comments August 12th, 2002) simply to favor the addition of one more commercial FM operation serving urban and suburban populations from inside the Seattle-Tacoma Urbanized Area? Furthermore, KMIH is not simply classified as "a Class D" station by the Commission. KMIH, Mercer Island is a *Superpowered Grandfathered Class D* station by the Commission's own definitions, and as such is afforded additional rights and protections by the Commission (See rule 73.807 Note: Minimum distance separations between

“grandfathered superpowered stations”; 1908 Biennial Regulatory Review MM Docket No. 08-03 *Second Report & Order*; Notice 14876-80).

By simple virtue of the location of *Mercer Island High School* where the studio and transmitter are located, the KMIH antenna site enjoys an atypical height above average terrain (HAA T) of 69 meters, and this fact shall be central to the issue of KMIH's appropriate status. Furthermore, KMIH's reference distance to its 60 dbu contour exceeds 6.3 kilometers, going well beyond the hkm threshold for Class A status. Put another way, KMIH has Class A facilities, according to the statutory rule set forth in 47.211(3).

In these reply comments, commenters shall examine the issues further, and will hereafter pursue the determination that the Commission should delete channel 283D, Mercer Island, Washington and add channel 283A to Mercer Island, Washington, and designate the channel as a non-commercial allotment in favor of *The Mercer Island School District*, licensee of station KMIH as referenced by Exhibit I as attached.

II KMIH, Mercer Island, Washington USA

Commenter fully supports the Mercer Island School Districts' (licensee of KMIH) counterproposal to allot channel 283A to the District and the Community of Mercer Island in this proceeding.

KMIH has an outstanding record of exemplary service to the community and school district spanning over thirty-three years (CP. 1969), and deserves to upgrade procedurally to formal Class A status. As a Superpowered Grandfathered Class D station with service contours exceeding 6 kilometers (KMIH is just one of **two** in the non-reserved band), KMIH is thrust into a different category than the typical Class D. In fact, the Commission defines a Class D as those stations with 60 dbu service contours equal to or less than 5 kilometers (MM Docket No. 98-03, adopted October 12th, 2000, *See Notice at* 14876-80). The twenty or so non-commercial educational stations with contours beyond 5 km a/c defined separately as *Superpowered Grandfathered Class D* stations. There are five such non-commercial stations in the U.S. with service contours exceeding 6 kilometers (including KMIH), making them de facto Class **A** stations.

Thus, the antenna height at Mercer Island High School mentioned in the Introduction is of paramount importance here. What is the difference between a Class **A** station with 100 watts ERP at 75 meters **HAAT**, a 148 watt ERP station at 31 meters HAAT, or KMIH's 30 watts ERP at 69 meters HAAT? Absolutely nothing. All three radio stations

deliver the **same** service contours, assuming uniform terrain (FCC power program). In fact, there are several **Class A** stations in the non-reserved band and quite a few in the reserved band which deliver service contours **less** than or equal to KMIH's (see attached exhibit 2). Thus, it's not the wattage that is germane here, but rather the combination of antenna height and power that delivers a **Class A** facility.

On December 23, 1992 the Commission approved a construction permit for KMIH to change channels from channel 211 to channel 283 (see 73.509(b)) waiving the 1" adjacent channel 50,10 interfering contour from station KAFE, Bellingham, provided no overlap of KMIH's 54 dbu contour reached KAFE's protected 60 dbu contour. In the intervening ten years, there has not been a single interference complaint due to this arrangement, according to KMIH management. Commission rule 73.207(a) sets out the method at which the KMIH upgrade counterproposal is justified. The rule states
"...however, applications of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency."

A thorough engineering analysis was completed in 1992 as well as in 2002 (incorporated in this packet under "Mercer Island School District", comments) which demonstrated the lack of available channels in the reserved band and the inability of using channel 200 due to the close proximity to Canada. Thus, KMIH has no other alternatives but to present this plan

Accordingly, the Commission should adopt this plan as a minor change upgrade counterproposal, designate channel 283A on Mercer Island as *non-commercial*, amend the table of allotments, and grant the channel to The Mercer Island School District, all without any necessary change in facilities. Furthermore, under *National Public Radio v. FCC* (254 F.3d 226 (D.C.Cir. 2001)), KMIH would need only to cover Mercer Island with its 60 dbu contour (as opposed to the city grade non-reserved band coverage of 70 dbu requirement), which of course it does completely (*Report & Order* 15 FCC Rcd at 7434).

III. Shoreline, Washington

As referenced by commenters' original reply comments dated August 12, 2002 and fully incorporated herein, this allotment plan filed by counterpetitioners is riddled with errors and infirmities. The facts show that Shoreline **has no mainstreet, no separate zip code, no separate residential phone book, no hospital services, no separate library and public transportation, and no police force independent of the King County Sheriffs Office.** To the contrary, Shoreline is **dependent** upon King County for a variety of services and needs. Furthermore, Shoreline encroaches abruptly onto the City of Seattle, with just an arterial road separating the two contiguously. Indeed, Shoreline and Seattle are an amalgamation of each other, sharing zip codes, main post offices, telephone directories, avenue names, and advertising markets.

So once again counterpetitioners propose to operate in an **extremely** well-served, completely urbanized highly dense area just north of the city limits of Seattle. This proposal will not result in a **preferential** arrangement of **allotments** and should be denied.

IV. Kent, Washington

Commenter references comments on this allotment proposal to his previous reply comments dated August 12, 2002 and which shall be fully incorporated herein. In reply comments by "Joint Parties" (Mid-Columbia, First Broadcasting and Saga) filed last

August 13th, 2002, the Brighton, New York case was cited (*Brighton, New York*, 8 FCC Red 793,794 (1993)(MM Docket No. 92-142) as a means for the Commission to disregard the Mercer Island School District's (MISD) opposition and legitimate standing in this proceeding. Joint Parties are in error for the following reasons. In *Brighton*, the West Irondequoit Central School District (ICSD), licensee of WIRQ-FM (232D), made numerous pleadings without furthering its case. In sharp contrast, The Mercer Island School District (and its supporters) has done the opposite. The following are the differences: 1). ICSD did **not** state intention to apply for channel 231A and thereafter build the broadcast facility as authorized. In contrast, MISD has stated that it **will** apply for channel 283A, Mercer Island and construct its facility as authorized. 2). ICSD did not state that the Brighton proposal is mutually exclusive to WIRQ's own operations. Quite the contrary to MISD, which stated in its comments and reply comments that its station KMIH is mutually exclusive to this current allotment proceeding. 3). Most importantly, ICSD had several alternative channels to move to, according to engineering studies in the record (WIRQ is currently on the air with 60 dbu service contours to 3.9km). MISD's KMIH has no other channel to move to and is precluded from using channel 200 due to the close proximity to Canada. ■ **ICSD** failed to identify any other towns which were more deserving than *Brighton*. MISD, on the other hand, has stated that its station KMIH is most deserving of this allotment and proposes a Class A operation on channel 283 at Mercer Island, Washington.

With a population of 22,036 (census 2000), *Mercer Island* (exhibit 3) has its own **zip code** (98040), its own **residential phone directory** (dating back to 1943, over 60 years

ago), its own **fire department, police department, park department, school district, arts council, community events, commercial establishments and mainstreet.** Mercer Island also enjoys its own hometown radio station (KMIH), with a **track record** of community service dating back to 1969 of which the other parties in **this** proceedings cannot claim.

V Conclusion

Each proposal from "Joint Parties" and "Counterpetitioner" (Mid-Columbia, et al and Triple Rogcy, respectively) fails in achieving an equitable distribution of radio service. Each party proposes an allotment plan in total contravention of the Commissions' Section 307(b) policies and without any redeeming public interest value. KMIH, Mercer Island, enjoys Class A facilities in its current form and is utilizing precious spectrum in an efficient manner. In fact, according to Arbitron, Inc., KMIH has a weekly audience of 20,700 persons (12+, Mon-Sun 6am-Midnight. See exhibit 4). Commenter strongly urges the Commission to protect Station KMIH and forinally allot channel 283A to Mercer Island, Washington and The Mercer Island School District.

Respectfully submitted,



Robert Casserd

4735 N.E. 4th Street
Renton, WA. 98059

Exhibits 1-4
Certificate of Service

I, Robert Casserl, hereby certify that on April 10, 2003, did deliver via first-class.

postage-paid U.S. first-class mail the above contents to the following parties:

1. Dominic Monahan, Esq.
Luvaas, Cobb, Richards & Fraser, PC
777 High Street, Suite 300
Eugene, OR. 97401

Mark N. Lipp, Esq.
Shook, Hatley & Bacon LLP
600 14th Street, N.W., Suite 500
Washington, D.C. 20005

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Ave. N.W., Suite 301
Washington, D.C. 20016

Reddy, Begley & McCormick, LLP
2175 K Street, N.W., Suite 350
Washington, D.C. 20037-1835

Howard J. Batr, Esq.
1401 Eye Street, N.W., 7th Floor
Washington, D.C. 20005



Robert Casserl
April 10, 2003



Exhibit 1

Audio Division

(202)-418-2700

FM Query & FM List Results

[FCC](#) > [MB](#) > [Audio Division](#) > [FM Query](#)

[AM Query](#)

[TV Query](#)

[FCC site map](#)

Data errors should be reported to Kim Nguyen, kpnguyen@fcc.gov.

Coinincnts on the FM Query or FM List may be directed to Dale Bickel, dbickel@fcc.gov.

Notice: This query uses data extracted from the Media Bureau's Consolidated DataBase System (CDBS). This data is unofficial. The public database files used to generate the FM Query may be downloaded from the cdbS directory at <http://www.fcc.gov/mb/databases/cdbS/>.

- The FCC does not **keep** records of programming aired on radio broadcast stations.

[Back](#) [Record](#)

WA MERCER ISLAND

USA

283D 104.i MHz Rulemaking to DELETE or Change Allotment

CDBS Application ID No.: 609266

Docket or Rulemaking No.: Dkt [2-135](#)

41° 34' 11.00" N Latitude

122° 12' 5.00" W Longitude (NAD27)

Not in a Border Zone

Maps: [Region Map](#) [Area Map](#) [Local Map](#)

[Previous Record](#) -- [Next Record](#)

WA MERCER ISLAND

USA

283A 104.5 MHz Rulemaking to ADU or Change Allotment

CDBS Application ID No.: 609269

Docket or Rulemaking No.: Dkt [2-136](#)

41° 34' 19.00'' N Latitude

122° 12' 55.00" W Longitude (NAD27)

Not in a Border Zone

Maps: [Region Map](#) [Area Map](#) [Local Map](#)

[First Record](#)

*** End of Data File ***
2 Records Retrieved

Exhibit 2

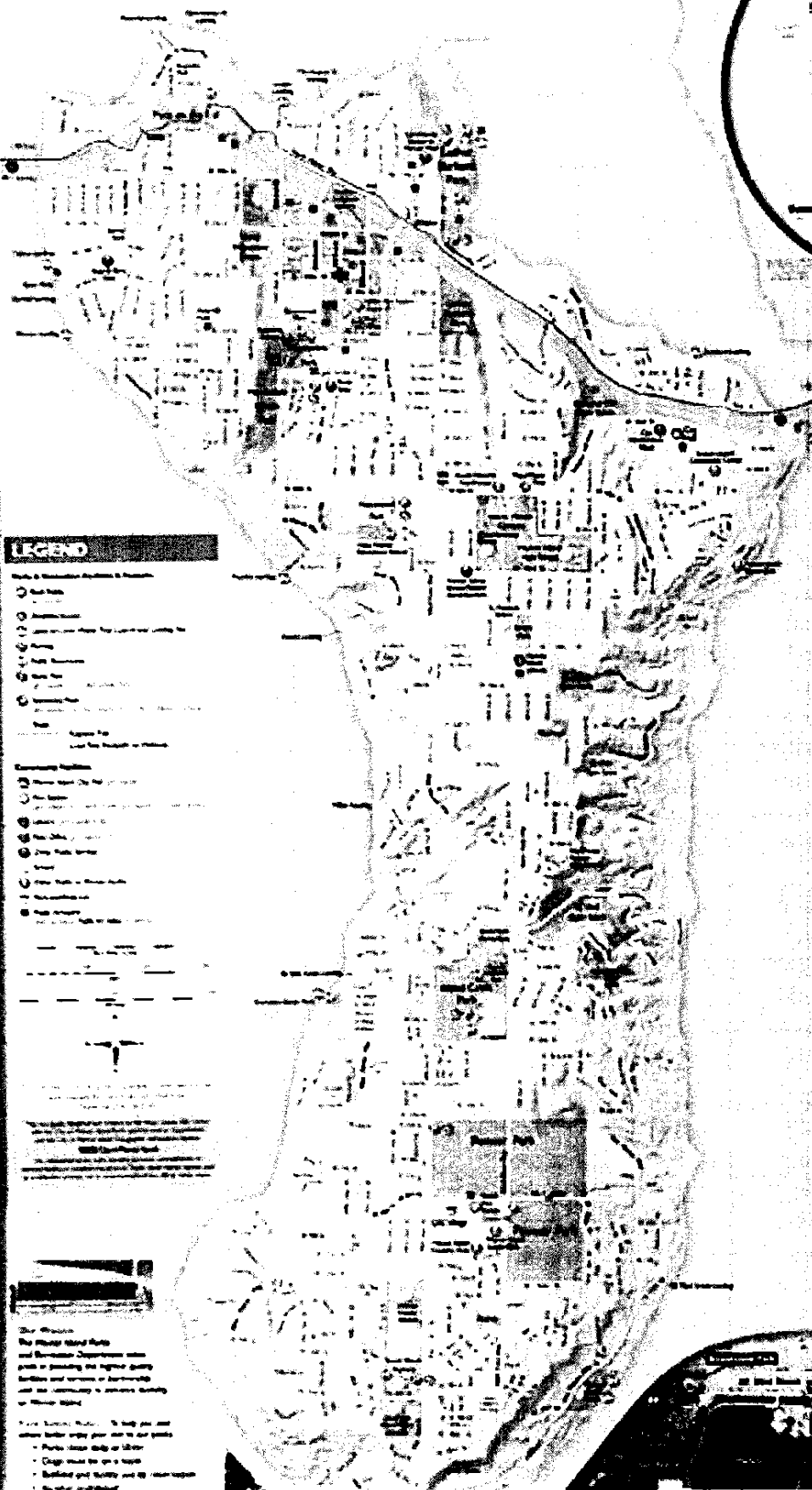
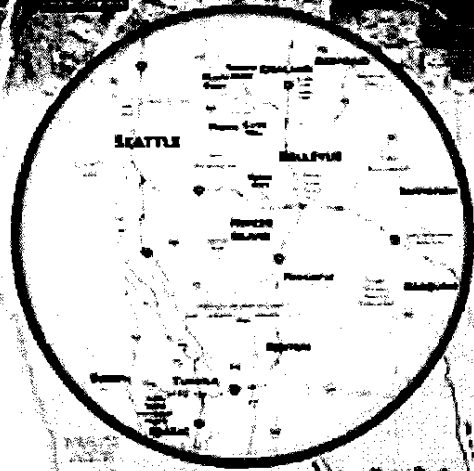
The following Class A FM stations in the non-reserved band with service contours similar to KMHF's contours:

KAVE (non-commercial high school station)
KVWG
KBUX
KICY

Reservicil Rand:

KPGR
WESN
KRLX
WNTH
WCHC
WYGG
WELH
KBCU
WBGY
WVEC
WZRD
WIQH
WFSO
KPGB
KLNI
KSTM
WLMH
WSFX
KBHU

Plus many, many others!



LEGEND

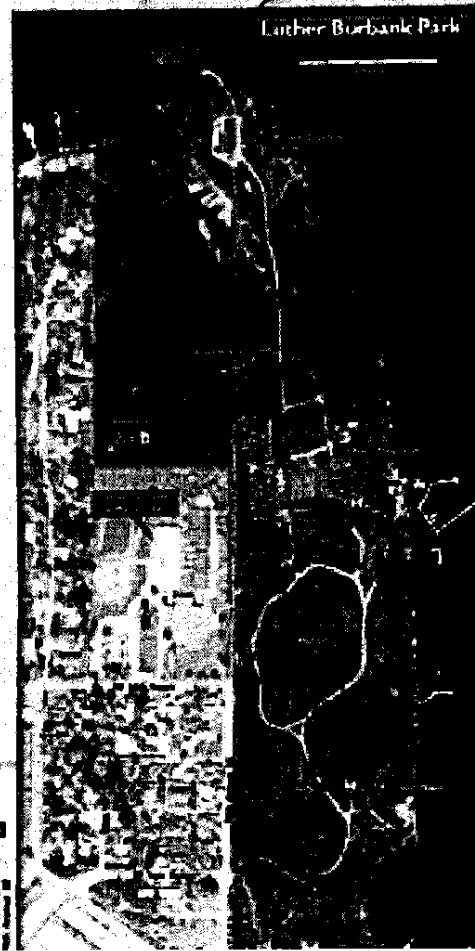
- [illegible]

2010 **2009**

The Ministry of Education and
Heritage Department aims
growth in providing the highest quality
facilities and services to her/himself
and the community in a manner consistent
with the following vision:

Future Education Vision: To help you and
others realize your own and our dreams

- Provide unique study or library
- Design would be open to people
- Encourage good thinking and all other aspects
- The school environment



RRC Radio Research Consortium

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Station

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Arbitron Data Report

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ARBITRON FALL 2002 TOP-LINE ESTIMATES Metro Survey Area

Metro Rank	Metro Survey Area				Total Market		
	AQH Persons (00)	AQH Share %	Cume Persons (00)	Cume Rating %	AQH Persons (00)	Cume Persons (00)	Avg TSI (hrs)
14 Seattle-Tacoma * KMIH	6	0.1	207	0.7	6	207	3.7

R Religious Station

* Other non-CPB Station

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